SIKANDER @ MOHD. SAFIQ

v.

THE STATE (DELHI ADMN.)

APRIL 6, 1999

[G.B. PATTANAIK AND M.B. SHAH, JJ.]

Penal Code, 1860—Ss. 302 and 300, Exception 4—Murder of step-mother and sister—No sudden fight—Accused inflicting number of dagger blows on the helpless victims—Whether covered under Exception 4 viz. grave and sudden provocation—Held, No, accused took undue advantage and acted in a most cruel manner—Ingredients of Exception 4 of S.300 not satisfied—Conviction and sentence upheld.

Words & Phrases

'Fight'—Meaning of in the context of Exception 4 of S. 300 Penal Code, 1860.

Appellant-accused was prosecuted for an offence under Sec. 302 of Penal Code. The prosecution case was that, father of the appellant had two wives and there was some property dispute in the family. There was a quarrel between the family members. Accused stabbed his step-mother and step-sister and both of them succumbed to their injuries. Trial Court convicted and sentenced him to death. On appeal, High Court upheld the conviction, but altered the sentence to life imprisonment. Hence the present appeal by the accused.

On behalf of the appellant it was contended that the offence was committed during a sudden fight and in a heat of passion, without any premeditation and hence would fall under Exception 4 of Sec. 300 of IPC. It was also submitted that the appellant was the sole earning member and looks after his disabled father and brothers including the children of his step-mother.

Dismissing the appeal, the Court

HELD : 1.1. The ingredients of Exception 4 of S.300 IPC, that there

A **was sudden fight between the accused and deceased and the accused had not taken undue advantage or acted in cruel or unusual manner is not satisfied on the facts of the case. Conviction of accused under S. 302 IPC is upheld. [436-G-H; 437-B]**

B *Surinder Kumar* **v.** *Union Territory, Chandigarh,* **[1989] 2 SCC 217 distinguished.**

1.2. There was no sudden fight between the accused and the step-mother or step-sister. Intervention of step-mother at the stage when the co-accused was inflicting injuries on her husband and protesting by saying as C **to why the handicapped father was being beaten, would not mean that there was fight between the appellant and the deceased step-mother. Similarly, intervening and entreating the accused not to inflict blows on her mother by deceased step-sister also cannot be termed as "fight". "Fight" postulates a bilateral transaction in which blows are exchanged between the parties.** D **Further, both the victims were totally unarmed, they had not caused any injury to the accused or co-accused. [436-B-E]**

Bhagwan Munjaji Pawade **v.** *State of Maharashtra,* **[1978] 3 SCC 330 and** *Narayanan Nair Raghwan Nair* **v.** *The State of Travancore-Cochin,* **AIR (1966) SC 99, relied on.**

E

1.3. Appellant-accused had taken undue advantage and acted in a most cruel manner by inflicting number of dagger blows on his helpless step-mother and step-sister. The injuries found by the Doctor who carried out the post-mortem examination on the body of the deceased step-mother had found F **in all sixteen incised wounds; similarly, he had noted eleven incised wounds on the dead body of the step-sister. [436-E-H]**

2. The fact that the accused and the other family members have reconciled their differences and are staying together or that the accused being the sole earning member of the family would be totally irrelevant on G **the question of conviction and sentence of the accused for the offence of murder of his step-mother and step-sister. [436-H; 437-A]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 323 of 1993.

H From the Judgment and Order dated 20.5.92 of the Delhi High Court in

Crl. A. No. 109 of 1991. A

R.K. Jain and K.V. Venkataraman for the Appellant.

Ms. Rekha Pandey and S.N. Terdol for the Respondent .

The Judgment of the Court was delivered by B

SHAH, J. The appellant Sikander @ Mohammad Shafiq is convicted under Section 302 of Indian Penal Code by the Additional Sessions Judge, Delhi, by judgment and order dated 5th/9th August, 1991 and was sentenced to death subject to confirmation by the High Court. Appellant preferred C Criminal Appeal No. 109 of 1991 against the conviction and sentence which was partly allowed. The order with regard to the death penalty was set aside and appellant was sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/- in default thereof to undergo R.I. for 18 months. Against the said judgment and order this appeal is filed. D

The prosecution version as stated by P.W.1 Ghulam Mohammad is that he was a resident of Delhi and was dealer and manufacturer of Umbrellas; he has got two wives known as Firdaus and Zohra Bi Noor Zahan. His first wife Firdaus is residing at House No. 377, Welcome Colony, Seelampur alongwith her three children, named, Mehboob, Ghulam Hassan and Shabana and her E other three children have been residing with him at his House No.1584, Turkman Gate. They are Sikander (appellant), Maqbool and Shamim. His second wife Zohra Bi Noor Zahan (deceased) had been residing with him alongwith her six children including daughter Gulzar Bano aged 17 years (deceased). He was also having a house at Bandra Road, Bombay where his F first wife was residing earlier before she shifted to Welcome Colony, Seelampur. There was dispute between him on the one hand and his wife Firdaus and her children on the other with regard to the house at Bombay. The appellant-accused and his brother were insisting for the transfer of the said house in the name of their mother at the earliest. For transferring the said house in the name of his first wife, he went to Tis Hazari on 17th October, 1988 alongwith G his son-in-law Aftab Ahmed and met his counsel who advised him to come on the next day. Hence, the said property could not be transferred in the name of his wife. At about 6.00 P.M., when he was sleeping in the house, he woke up on hearing the noise of a quarrel and saw Shamim, daughter of Firdaus abusing Zohra Bi. He slapped Shamim and asked her to desist from abusing H

A Zohra Bi. After this the appellant and Maqbool came into the house, Maqbool went inside the room alongwith Shamim and then came out with a dagger. Maqbool abused him and stabbed on his left eye, he fell down. At that time, Zohra Bi intervened and protested saying as to why he was beating his handicapped father. At that time, appellant snatched away dagger from
B Maqbool and started stabbing Zohra Bi repeatedly. At that stage, his daughter Gulzar intervened and asked the appellant as to why he was stabbing Zohra Bi. Maqbool stated that she was the root of all troubles so the appellant started stabbing Gulzar at her abdomen, neck and other parts of her body. After sometime when persons collected outside, the appellant ran away. Within minutes Johra Bi and Gulzar died at the spot. Police recorded the
C statement of P.W.1 Gulam Mohammad as FIR. Appellant as well as his brother Maqbool were chargesheeted. Maqbool was convicted under Section 307 and 324 of the Indian Penal Code. He has not preferred any appeal against his conviction.

D After considering the evidence of the prosecution witnesses particularly P.W.1 Gulam Mohammad, P.W.2 Mehtab Bano and P.W.4 Biliquees Akhtar who have unequivocally deposed that both the deceased persons were killed by the appellant by inflicting dagger blows, the High Court has rightly arrived at the conclusion that accused is guilty for the offence for which he is charged. Mr. R.K. Jain, learned senior counsel for the appellant, has not raised
E any contention with regard to the conviction of the appellant. In this view of the matter, it is not necessary to discuss the evidence of the witnesses in detail. However, learned senior counsel Mr. Jain submitted that the appellant ought not to have been convicted under Section 302 IPC but at the most he could be convicted under Part I of Section 304 IPC. It is submitted that
F admittedly this is not a premeditated murder and the offence is committed on the spur of the moment because of grave and sudden provocation. He submitted that there was no intention on the part of the appellant to use even dagger but because Maqbool brought it out from the room and when he was inflicting some blows to his father, he snatched away the same and because
G of serious altercation between him, his father and deceased mother and sister, the incident occurred. It is also submitted that at present, he is the sole earning member of the family; P.W.1 has also filed an affidavit to the effect that he is staying with his first wife Firdaus and children including that of deceased wife; he is a victim of paralysis of neck and mostly confined to bed and appellant is the sole bread- earner of the entire family and looks after him
H as well as his large family. It is the contention of the learned senior counsel

that considering the fact that incident took place because of the sudden fight and in a heat of passion without there being any premeditation, the case would fall only under Exception 4 of Section 300 IPC. He submitted that number of injuries received by the victim is not the relevant factor to be taken into consideration for deciding whether the offence would be covered by Exception 4 of Section 300 IPC and the relevant consideration is the sudden and unpremeditated fight. In support of his contention, he relied upon the decision of this Court in *Surinder Kumar* v. *Union Territory, Chandigarh,* [1989] 2 SCC 217 at 220.

In the aforesaid case after analysing the ingredients of Exception 4 of Section 300 IPC, the Court observed as under:

> "Exception 4 to Section 300 reads as under :
>
> Exception 4.-Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.
>
> *Explanation.*- It is immaterial in such cases which party offers the provocation or commits the first assault.
>
> To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. *Of course, the offender must not have taken any undue advantage or acted in a cruel manner."*

In the said case after considering the proved facts that all of a sudden quarrel took place when the deceased and the witness entered the room occupied by the accused and his family members and had demanded vacant possession of the kitchen, witness uttered filthy abuses in presence of the sister of accused which finally led to heated arguments between the deceased and the witness on one side and the accused on the other. At that stage,

witness took out a pen knife from his pocket, the accused went in the kitchen and returned with a knife and in the ensued fight between them few injuries were caused to the deceased out of which one proved to be fatal. In such circumstances, the Court held that the act would be covered by Exception 4 of Section 300 IPC and offence would be punishable only under Part I of Section 304 IPC. As against that, in the present case, facts are totally different, firstly, there was no sudden fight between the accused and the deceased Zohra Bi or daughter Gulzar. Intervention of Zohra Bi at the stage when the accused Maqbool was inflicting injuries on her husband and protesting by saying as to why a handicapped father was being beaten would not amount that there was fight between the appellant and the deceased. Similarly, intervening and entreating the accused not to inflict blows on her mother Zohra Bi by deceased Gulzar also cannot be termed as "fight". As such there was no "fight" between P.W.1 and accused Maqbool or the appellant, it was only a verbal quarrel. "Fight" postulates a bilateral transaction in which blows are exchanged between the parties (Re: *Bhagwan Munjaji Pawade* v. *State of Maharashtra*, [1978] 3 SCC 330 and *Narayanan Nair Raghwan Nair* v. *The State of Travancore-Cochin*, AIR (1956) SC 99. Further, both the victims i.e. Zohra Bi and Gulzar were totally unarmed, they had not caused any injury to the appellant or Maqbool. Hence, it will be difficult to accept the contention that there was a sudden fight between the accused or the witness and the victims, even though the quarrel started suddenly. Secondly, in the present case, it will be difficult to hold that appellant had not taken any undue advantage or acted in a cruel manner. The injuries found by the Doctor, P.W.12, who carried out the post-mortem examination on the body of the deceased Zohra Bi, aged 40 years, had found in all sixteen incised wounds, similarly, he had noted eleven incised wounds on the dead body of Gulzar, aged about 17 years. On the face of it, it is apparent that accused acted in a most cruel manner by inflicting number of dagger blows on a helpless step-mother and young sister. Hence, even assuming that there was no premeditation and the act was done in the heat of passion because of sudden quarrel between P.W.1 on one side and Maqbool and appellant on other side and that appellant used the dagger which was brought out by his brother Maqbool for inflicting injuries, yet main requirements, *viz.*, (i) it was sudden fight and (ii) accused have not taken undue advantage or acted in cruel or unusual manner of Exception 4 of Section 300 IPC are not satisfied. Further, the contention of the learned counsel for the appellant that P.W.1 and the accused have reconciled and are staying together or that accused is sole earning member of the family would be totally irrelevant on the question of conviction and

sentence of the accused for the offence of murder of his step-mother and sister. A

In the result, the appeal fails and is dismissed accordingly. Bail bond stands cancelled. Appellant must surrender forthwith to serve the sentence.

S.V.K.I. Appeal dismissed. B